IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 1545 OF 1996

IN

SUIT NO. 1434 OF 1996

Mrs. Mridula V. Rathi and ors. .....**Plffs.**
vs.
Mr. Ramgopal Gupta and ors. .....**Defnds.**

A L O N G W I T H

NOTICE OF MOTION NO. 1399 OF 2002
IN
SUIT NO. 1434 OF 1996

Mrs. Mridula V. Rathi and ors. .....**Plffs.**
vs.
Mr. Neelkumar Gupta and ors. .....**Defnds.**

Vinay Rathi-plaintiff no.3 present in person.

R.V Govilkar for defendant no.1 to 4.

CORAM: S.U. KAMDAR, J.

DATE : 30th September, 2005.

P.C. :.

1. By consent of the parties the following order

is passed :

(i) In so far as Notice of Motion No. 1545 of 1996 is concerned, Learned counsel for the defendant makes a statement on receiving instruction from his client, that the defendant will not in any manner interfere with the use, occupation and possession of the premises which is presently in occupation of the plaintiff being Cabin No.7 and part of Cabin No. 3 till the hearing and final disposal of the suit.

(ii)In so far as the dispute as to the area of the premises is concerned according to the plaintiff the area which was in his occupation prior to his illegal dispossession was 225 sq.ft whereas according to the defendant it was 168 sq.ft. In so far this aspect of the controversy is concerned learned counsel for the defendants gives an undertaking that in any event if the plaintiff succeeds in the suit and the court coming to the conclusion

that the plaintiff is entitled to the area in addition to the area he is in use, occupation and possession of then only in that event the defendants gives an undertaking to hand over additional area as determined by the court or compensate the plaintiffs in terms of the money as decided by the Court at the time of final hearing of the suit.

(iii) Learned counsel for the defendant further undertakes that in so far as the area in occupation of the plaintiff is concerned he will keep the same access free and the plaintiff will be permitted to use the said premises freely which is in his occupation. In view of the undertaking as aforesaid which are accepted by the Court, nothing survives further in the motion and accordingly the same is disposed off.

3. In so far as Notice of Motion No. 1399 of 2002

is concerned the present notice of motion has been taken out for withdrawal of the compensation amount deposited by the plaintiff towards his use, occupation and possession as a licensee of the premises which he has been allegedly dispossess. The proceedings has a chequered history but suffice it to state that by an order dated 23.8.2002 in Appeal No. 919 of 2000 the Division Bench has held as under :

> "4. As far as the prayer (c) of the motion is concerned, it seeks a direction that the amount of compensation being deposited by the Appellant at the rate of Rs.3100/- per month lying with the High Court be invested. What we find is that the Appellant has deposited this amount from time to time and it is not drawing any interset thereon. The Appellant is continuing to deposit that amount from month to month. Mr. Govilkar submits that the respondents being the licensor are entitled to receive that amount. Her submits that the Appellant cannot make grievance if the respondents withdraw the amount. However, there is no application by the Respondents to withdraw the amount and the amount deposited is just lying with the Prothonotary without gaining any interest thereon. We therefore accept the submission of Mr. Rathi as far as prayer (c) is concerned and direct the Prothonotary to invest the deposited amount in a nationalised bank for a period of 91 days to begin with and continue to renew the deposit by further period of 91 days until further orders are passed by this court. Mr.

> Govilkar submits that he will apply for withdrawal of that amount. As and when such application is made, that will be decided independently on the merits. This order does not mean any reflection on the merits of both the parties."

4. Pursuant to the aforesaid directions the defendants have taken out the present application for withdrawal of the amount. I am of the opinion that the plaintiff being put back in possession of the premises he is liable to payment of the compensation amount and he cannot enjoy the premises by stopping the payment of compensation to the defendant. The plaintiff has deposited the same in the court. The plaintiff contends that the defendant should not be permitted to withdraw the said amount because the defendant is not his licensor. The original licensor was the father of the defendant nos.1,2, 3 and 4. The defendant no.1 is the son of the deceased licensor. The defendant no.2 is the wife. The learned counsel undertakes to file vakalatnama as far as defendant nos.3 and 4 is concerned who are the sisters of the deceased licencee. Mr. Govilkar makes a statement that he will file vakalatnama for defendant nos.3 and 4

within a period of one week from today. Thus the defendants are all the legal heirs of the deceased and represented by the learned advocate and therefore there is no question of withholding the money in court at specious plea that the amount should not be paid to the defendants because the original licensor having expired they are not entitled to the said amount. I am also of the further opinion that if Mr. Govilkar files the vaklatnama for all the defendants nos.1 to 4 then in that event from the first of the next month, on the date of the vakalatnama filed the plaintiff should be directed to pay compensation of Rs.3100/- per month to the advocate for defendant nos.1 to 4 and shall not continue to deposit in this court. In so far as the amount lying deposited in the office of the Prothonotary and Senior Master is concerned, defendant nos.1 to 4 are at liberty to withdraw the same after filing vakalatnama on behalf of the defendant nos.3 and 4. The amount which is directed to be withdrawn is Rs.3,34,800/- (3100 x 108) from 6th Sept, 96 to 5th Sept, 05 plus interest. Accordingly the following order is

passed.

(i) That the defendant nos.1 to 4 to withdraw a sum of Rs,3,34,800/- (3100 x 308) from 6th Sept, 96 to 5th Sept, 05 plus interset from the amount which is lying with the office of the Prothonotry and Senior Master. Office is also directed to pay the aforesaid amount with accrued interest if any. The balance amount if any will be continued to remain deposited in the court and the said amount deposited will be invested in fixed deposit with any nationalised bank for a period of one year and renewed from time to time till further orders.

(ii) It is further directed that the plaintiff to pay directly the defendant the amount of Rs.3100/- per month as compensation with effect from

1.11.2005 provided that the defendant has filed vakalatnama on behalf of the defendant nos.1 to 4.

(iii) If the said vakalatnma is not filed the plaintiff to continue to deposit the said amount in the court as per the earlier orders.

(iv) Both the Notice of Motions are disposed off accordingly. However there shall be no order as to costs.

sd/-

****

**